

WASHINGTON, D. C. 20505

Office of Legislative Counsel

1 OCT 1976

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

Enclosed is the proposed legislative program of the Director of Central Intelligence, the Intelligence Community Staff, and the Central Intelligence Agency for the first session of the 95th Congress. This program is submitted in accordance with Office of Management and Budget Circular No. A-19, Revised.

The Director of Central Intelligence, the Intelligence Community Staff, and the Central Intelligence Agency have two principal legislative objectives for 1977. First, we are seeking enactment of legislation to establish a criminal penalty for the unauthorized disclosure of intelligence sources and methods. This legislation was proposed by the President in his 18 February 1976 message to the Congress, and was introduced as H.R. 12006 in the 94th Congress but was not considered. It is recommended for inclusion in the President's 1977 legislative program. Second, we are seeking an amendment to the National Security Act of 1947 establishing in lieu of the single position of Deputy Director of Central Intelligence two deputy positions, a Deputy Director of Central Intelligence for the Intelligence Community and a Deputy Director of Central Intelligence for the Central Intelligence Agency. We submitted this proposal to OMB in June of this year and expect its approval shortly. This legislation is necessary to further effectuate Executive Order 11905, and we recommend its inclusion in the President's 1977 legislative program.

In addition, the Central Intelligence Agency is considering seeking an amendment to Section 5(d) of the Central Intelligence Agency Act of 1949, as amended, to authorize Agency security officers to carry firearms under a broader range of circumstances than appears to be authorized currently under that Section. No final decision has been made on whether to seek this amendment in 1977.

Moreover, the Intelligence Community Staff has under consideration the possible need for amending the National Security Act of 1947 to define the Intelligence Community responsibilities of the Director of Central Intelligence. The Staff is also considering whether there is need for statutory recognition of the Intelligence Community Staff now that it has become a line item in the FY 1977 Defense Appropriations Act. No final decision has been made as to whether specific proposals will be forwarded on these two matters.

Finally, in the 94th Congress the Director of Central Intelligence supported carefully drawn legislation to authorize applications for court orders approving electronic surveillance for foreign intelligence purposes. The Director attaches great importance to this problem and is interested in participating in the consideration of any such legislation in the 95th Congress.

As you know, continuing congressional interest in statutory charters for intelligence activities may precipitate the preparation of other proposals. No laws or provisions of law affecting CIA will expire in 1977.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Enclosure

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OLC:WPB:sm (29 Sept 76)

DIRECTOR OF CENTRAL INTELLIGENCE
INTELLIGENCE COMMUNITY STAFF
CENTRAL INTELLIGENCE AGENCY

PROPOSED LEGISLATIVE PROGRAM FOR THE
FIRST SESSION OF THE 95TH CONGRESS

PART I--PRESIDENT'S PROGRAM PROPOSALS

95-1. "Intelligence Sources and Methods" - Establish Criminal Penalty For Unauthorized Disclosure: The continued effectiveness of the United States foreign intelligence collection effort is dependent upon the adequate protection of the intelligence sources and methods involved. In recognition of this, Congress, in Section 102(d)(3) of the National Security Act of 1947, made the Director of Central Intelligence responsible for the protection of Intelligence Sources and Methods from unauthorized disclosure. Unfortunately, there is currently no statutory authority to implement this responsibility. This proposed legislation would remedy this deficiency. In recent times, serious damage to our foreign intelligence effort has resulted from unauthorized disclosures of information related to intelligence sources and methods. The circumstances of these disclosures precluded punitive criminal action.

In most cases existing law is ineffective in preventing disclosures of information relating to Intelligence Sources and Methods. Except in cases involving communications intelligence, no criminal action ordinarily lies unless the information is furnished to a representative of a foreign power or the disclosure is made with intent to harm the United States or aid a foreign power. Except in the case of knowingly furnishing classified information to either a foreign government or a foreign agent, prosecution requires proof, to the satisfaction of the jury, that the information affects the national defense within the meaning of the statute. This can only be established by further public disclosure in open court which may aggravate the damage to the security and intelligence interests of the United States and raises an additional obstacle to prosecution. The difficulties imposed by these burdens substantially reduce the effectiveness of the general criminal statutes as a deterrent to unauthorized disclosure of sensitive Intelligence Sources and Methods information.

The proposed legislation amends Section 102 of the National Security Act of 1947 by adding a new subsection (g) defining "information relating to intelligence sources and methods" as a separate category of information to be accorded statutory recognition and protection similar to that provided "Restricted Data" under the Atomic Energy Act. The proposed law recognizes the authority of the Director of Central Intelligence and the heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States to limit the dissemination of information related to Intelligence Sources and Methods of collection. It provides for a criminal penalty for the disclosure of such information to unauthorized persons and for injunctive relief. The provision is specifically limited to those Federal employees, former employees, or others having a privity of relationship with the information disclosed. It does not apply to outside third parties, such as the press to whom the unauthorized disclosure is made.

The President proposed this legislation in his 18 February 1976 message to the Congress. It was introduced during the 94th Congress as H. R. 12006, but no action was taken on it.

Enactment of this proposal will not result in significant additional costs to the Federal Government. If the proposal is successful in deterring unauthorized disclosures, it would result in substantial savings to the Government, by preserving existing, often very expensive, intelligence collection systems.

95-2. Amendment of the National Security Act of 1947 to Establish a Second Statutory Deputy Director of Central Intelligence:
The National Security Act of 1947 established the Office of Director of Central Intelligence as executive head of the Central Intelligence Agency. Among his responsibilities under the Act, the Director is charged with the oversight and coordination of the foreign intelligence community. Over the years, this latter supra-departmental responsibility has become increasingly important. The President, through Executive Order 11905, has recently taken steps to further enhance the role of the Director in coordinating the activities of the Intelligence Community.

The Director's expanding duties in administering the Intelligence Community, handling relations with other components of the Government, serving as the Government's principal foreign intelligence adviser, and passing on broad questions of policy, leave him less time for day-to-day supervision of the Agency. It has become apparent that the Director must have the support of two deputies if he is to function effectively in his dual role as administrative head of the Central Intelligence Agency and overall coordinator of the Intelligence Community.

In this connection, the President's Commission on CIA Activities Within the United States has recommended the creation of two statutory deputies to improve supervision and management of the Central Intelligence Agency and to assist the Director in his Community responsibilities. The President has already taken administrative action to this effect in Executive Order 11905 by directing the Director of Central Intelligence to delegate the day-to-day operation of the CIA to the Deputy Director of Central Intelligence and by creating the position of "Deputy to the Director of Central Intelligence for the Intelligence Community" to assist the Director in his supervision of the Intelligence Community. Because of the nature of their respective positions and the responsibility imposed upon them, it is recognized that it would be desirable for both Deputies to be politically accountable officials--appointed by the President and confirmed by the Senate.

The proposed legislation amends Section 102 of the National Security Act of 1947 by creating, in lieu of the one Deputy Director of Central Intelligence currently provided for in that Section, two Deputy Directors: a Deputy Director of Central Intelligence for the Central Intelligence Agency and a Deputy Director of Central Intelligence for the Intelligence Community. The proposed legislation authorizes the Director to delegate to each of the Deputy Directors any of the authorities vested in him by virtue of his position as Director of Central Intelligence and as head of the Central Intelligence Agency. It provides that the Director and Deputy Directors shall be appointed by the President with the advice and consent of the Senate. It provides further that the positions of Director of Central Intelligence and Deputy Director of Central Intelligence for the Central Intelligence Agency shall not be occupied simultaneously by a commissioned officer of the armed services.

This proposal was submitted to OMB in June 1976 and was approved on 17 September 1976. Enactment of this proposal will not result in significant additional costs to the Federal Government. At present, the position of Deputy to the Director of Central Intelligence for the Intelligence Community is established at Level IV, which provides for a salary of \$39,900 under the current Executive Schedule. An upgrading of the position to Level III, which provides for a salary of \$42,000, would represent an increased salary cost of \$2,100.

PART II--ALL OTHER PROPOSALS

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1. The Central Intelligence Agency is considering proposing an amendment to Section 5(d) of the Central Intelligence Agency Act of 1949, as amended, to authorize Agency security personnel to carry firearms under a broader range of circumstances than appears to be authorized currently under that Section. Section 5(d) now provides that Agency "couriers and guards" are authorized to carry firearms "when engaged in transportation of confidential documents and materials." The proposal under consideration would authorize Agency security personnel to carry firearms for the purpose of protecting intelligence sources and methods when: (i) safeguarding confidential documents and materials; (ii) guarding Agency facilities; (iii) protecting Agency personnel, defectors and foreign persons visiting the United States under Agency auspices; and (iv) protecting operational funds.

The proposed legislation and supporting documents are in the process of being prepared, and final decision on whether to submit this proposal will be reached shortly.

2. The Intelligence Community Staff is considering proposing amendments to the National Security Act of 1947 to define the Director of Central Intelligence responsibilities in leadership of the Intelligence Community and his role in budget development and resource allocation for the Community. It also is considering whether there is need for a statutory provision recognizing existence of the Intelligence Community Staff now that it has become a line item in the FY 1977 Appropriations Act. Final determination has not yet been made as to whether either of these proposals should be submitted.